IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS APPEAL NO.56 OF 2006

Commissioner of Customs ..Appellant

Vs.

M/s.HICO Enterprises ..Respondent

Mr.S.M.Shah with Mr.Y.R.Mishra for the Appellant.
Mr.Aarti Sathe i/b. Mr.M.R.Baya for the Respondent.

CORAM :- DR.S.RADHAKRISHNAN &
J.P.DEVADHAR,JJ.

DATE : 25TH JANUARY,2007

P.C.

1. Heard the learned Counsel for the parties. In this Appeal, the following substantial questions of law are raised.

a) Whether the learned Customs, Excise and Service Tax Appellate Tribunal (LB) was correct in rejecting the Application for Rectification of Mistakes on the grounds of non-maintainability alone because the order dated 20th September,2005 was a referral order and not a final order although judgment rendered per Incurium is not binding ?

b) Whether learned CESTAT (LB) was right in not rectifying the apparent mistakes which were brought to their notice, through the application of ROM filed by the department ?

c) Whether the LB was correct in not appreciating that the Regular Bench has to follow the reference order passed by them and pas the final order based on the reference order thus rendering the mistakes apparent remain untouched, unaltered and unanswered ? Whether the priori reference order does not

set a bad precedence in as much as not rectifying the apparent mistakes by shedding the empowered responsibility and canvassing their order as a reference order and not a final order ?

d) Whether, the LB was right in not appreciating the rule/order "Justice delayed is justice denied" as held by the Court of Law? Various judgments of the Tribunal have been set aside on this ground alone ?

e) Finally, whether the order dated 20th September,2005 passed by CESTAT (LB) does or does not fall within the purview of Sub Section (1) of the Section 129B of the Customs Act 1962? And whether the LB was right in their decision of rejecting the application for Rectification of Mistakes filed by the department, under the legal provisions of Sub Section (2) of the Section 129B of the Customs Act,1962 ?

2. There is no dispute that all the aforesaid questions of law arose out of an interlocutory order passed in Miscellaneous Application. We have perused the judgment in **CC(IMPORT), Mumbai Vs. Pride Foramer, 2006(77) RLT 806 Bom.** In view of the said judgment, the present Appeal is not maintainable at all. Hence, we are not inclined to entertain the same. Hence, the Appeal stands dismissed. However, we make it clear that the Appellant is at liberty to adopt appropriate proceedings with regard to the questions of law raised in this Appeal.

(J.P.DEVADHAR,J.) **(DR.S.RADHAKRISHNAN,J.)**

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